IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No.275 of 2007
With
CIVIL APPLICATION No.10728 of 2007
In
APPEAL FROM ORDER No.275 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT INDUSTRIAL DEVELOPMENTCORP. THRO' IT'S REGIONAL
Versus
UGAMSHREE METAL INDUSTRIES

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Appearance :
MR GIRISH D BHATT for Appellant:1

MR BK DAMANI for opponent:1

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 16/08/2007

ORAL JUDGMENT

1. **ADMITTED.** Notice for respondent is waived by Shri B K Damani, learned counsel for respondent.

2. The present Appeal From Order has been preferred against the order passed by the City Civil Court, Ahmedabad dated 31st January, 2007, below Exh.19 (Notice of Motion), in Civil Suit No.1061 of 2005 whereby the present petitioner (original defendant) restrained from selling, transferring or alienating the suit property of the respondent (original plaintiff) and a direction was also given to release the property in question.

3. I have heard the learned counsels for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order dated 31st January, 2007 passed by the City Civil Court below application Exh.19 (Notice of Motion) in Civil Suit No.1061 of 2005, mainly for the following facts and reasons.

3.1 It appears, from the facts of the case, that the actions have been initiated by the present appellant (original defendant) under the Gujarat Public

Premises (Eviction of Unauthorized Occupants) Act, 1972 (for short, 'the Act, 1972'). The original plaintiff was liable to make the payment of sizeable amount. The amount was not paid and, therefore, the actions were initiated by the present appellant under the Act, 1972.

3.2 It also appears, prima-facie, from the facts of the case that possession of the impugned premises has also been taken over under Section 5 of the Act,1972 on 3rd March, 2004.

3.3 Looking to the provisions of the Act, 1972 under Section 9 of the Act, appeal is provided against the order passed by the Competent Officer. An appeal as contemplated under Section 9 of the Act, 1972, the present respondent (original plaintiff) preferred a Civil Suit bearing No.1061 of 2005. In fact, the suit is not tenable at law. This aspect of the matter has not been appreciated at all by the Trial Court.

4. Though the contention was raised by the present appellant (original defendant) that there is no jurisdiction with the Trial Court, it has been

observed by the Trial Court in impugned order that after the evidence is taken, a question of jurisdiction will be considered. Looking to the provisions of the Act,1972, it appears that, the City Civil Court at Ahmedabad ought not to have entertained the suit especially looking to the provisions of Section 9 of the Act, 1972. There was no question of taking any evidence for deciding this issue. Upon bare reading of the provisions of the Act, 1972, a conclusion could have been arrived at by the Trial Court. Thus, there is a grave error committed by the Trial Court apparent on the face of record. Section 16 of the Act, 1972 reads as under:

> "**16.** No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person on the ground that he is unauthorized occupation of any public premises or for any other reason specified in sub-section (1) of Section 4, or the recovery of the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the Corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs."

5. Learned counsel appearing for the appellant

(original defendant) has relied upon decision reported in **1995(2) GLR 1714** in case of **Gujarat State Road Transport Corporation Vs. Vimlaben L Shah** and has rightly therefore, submitted that there is a bar of jurisdiction of the Civil Court in respect of "eviction of any person on the ground that he is in unauthorized occupation of any public premises". In view of above, Para:6 of aforesaid judgment reads as under.

> " **PARA:6-** In view of the aforesaid decision of the learned single Judge of this Court and even otherwise from specific language employed by **Sec.16** of the said Act there is no manner of doubt that the Gujarat Legislature by enacting Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 intended to create an independent and separate authority to decide the dispute of eviction from public premises by the competent authority and it also wanted to completely oust the jurisdiction of the Civil Court so as to avoid initiation of any parallel proceedings or invocation of parallel jurisdiction before the Civil Court. Despite the aforesaid legal position the Civil Judge (JD) at Bhavnagar not only entertained the suit but granted injunction in favour of the allottee whose term of licence has expired and against whom the proceedings of eviction were initiated by the competent authority. The very act of entertaining the suit was without

jurisdiction as the Civil Court lacked the jurisdiction or to put it mildly its jurisdiction was specifically ousted by the special statute. In my opinion, therefore, the application given by the petitioner-Corporation at Exh.29, i.e., to dismiss the suit as the Civil Court has no jurisdiction to decide the question of eviction of unauthorized occupation in view of the provisions of the said Act, was required to be allowed and by raising specific issue ought to have decided the question of jurisdiction. In fact, since the matter was covered by binding precedent of this Court which is the Court superior to the District Court at Bhavnagar, the Civil Judge (JD) at Bhavnagar ought not to have rejected the application on the ground that since the order of injunction was confirmed by the District Court it cannot decide the issue on jurisdiction. The order, dated 14-7-1992 passed by the Civil Judge (JD) at Bhavnagar below Exh.29 preferred by the Corporation was required to be granted. No useful purpose wold be served by remanding the matter to the trial Court when the position of law is no longer *res integra* and is squarely covered by the judgment of the single Judge of this Court in the case of *Jadeja Shivubha (*supra). I, therefore, hold that the suit instituted by the respondent-plaintiff being RCS No.469 of 1984 in the Court of Civil Judge (JD), Bhavnagar was totally without jurisdiction and the Civil Court totally lacked jurisdiction in entertaining the

same. It is directed that the civil Court shall take up such suit on file and after following the directions contained in this judgment and the binding precedent of this Court in the case of *Jadeja Shivubha (supra)* shall immediately dispose of RCS No.469 of 1984 on or before 30th June, 1995. Writ of this judgment and order shall be sent along with the copy of this judgment and order to the Court of Civil Judge (JD) at Bhavnagar forthwith with further direction to the Dist.Judge, Bhavnagar to see that the judgment and order of this Court is complied with. CRA No.1065 of 1992 is, therefore, allowed. Rule is made absolute accordingly. No costs." (Emphasis Supplied)

6. As a cumulative effect of the aforesaid facts and reasons, the order passed by the Trial Court is quashed and set aside. The Trial Court has no jurisdiction to entertain the suit much less an application below Exh.19.

7. Appeal From Order is allowed.

8. In view of order passed in above Appeal From Order, Civil Application preferred therein also stands disposed of.

(***D.N.PATEL, J.)***

Amit/-